

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0336/P1dn
MDK:wlj:jf

February 10, 2005

Sen. Cowles:

Please note the following about this preliminary draft:

1. The instructions refer to a public utility's "purchase," in addition to "construction," of an electric generating facility. However, the certificates under ss. 196.49 (3) and 196.491 (3), stats., apply to the construction, not purchase, of a facility. Therefore, the draft does not refer to purchases.
2. The draft applies to applications for certificates under s. 196.49 (3) or 196.491 (3), stats. However, if you anticipate that an order will be sought only for large electric generating facilities, you should consider revising the draft so that it applies only to certificates under s. 196.491 (3), stats.
3. I assume that you want to require the PSC to hold a hearing on an application for an order. Is that correct? (On a related point, note that the PSC must hold a hearing under s. 196.491 (3), stats., but that a hearing is not always required under s. 196.49, stats. Therefore, proposed s. 196.371 (3) (a) allows the PSC to hold the hearing on the application for an order in conjunction with the hearing, *if any*, for the certificate under s. 196.49 (3) or 196.491 (3), stats.)
4. Are the grounds for issuing an order okay (i.e., PSC determinations regarding sufficient degree of certainty and public interest)?
5. Are the application requirements in proposed s. 196.371 (2) (a) to (d) okay?
6. The instructions require the PSC to determine whether to issue an order prior to commencement of construction. I didn't include this requirement because it imposes a deadline on the PSC that is based on an event outside the PSC's control. Instead, proposed s. 196.371 (3) (a) requires the PSC to make a determination no later than the date that the PSC takes final action on the application for a certificate. Is that okay? If not, and you want a different deadline, you should be aware of the following timing issues under s. 196.491 (3), stats. Under s. 196.491 (3) (g), the PSC has 180 days (plus, subject to court approval, an additional 180 days) to take final action on an application for a certificate under s. 196.491 (3). Also, s. 196.491 (3c) imposes a deadline on commencement of construction based, in part, on the date of issuance of a certificate. You should consider whether your deadline is consistent with the foregoing deadlines.

7. Proposed s. 196.371 (3) (b) 2. adjusts the 90-day deadline for a public utility's acceptance or waiver of an order in the event that the public utility (or an intervenor) seeks judicial review of an order. (Under s. 196.41 stats., PSC orders are subject to review under ch. 227, stats. In addition, ch. 227 itself provides judicial review for persons whose substantial interests are adversely affected by agency decisions. See s. 227.52, stats.)

8. The instructions include a delayed effective date of September 1, 2005. However, it's possible that the bill won't pass until after that date. Therefore, I changed the delayed effective date to the first day of the third month after publication, which is approximately two months after publication. Is that okay?

9. Note that the PSC has approximately two months after publication of the bill to promulgate emergency rules and submit proposed rules to the Legislative Council. You may want to get input from the PSC on whether more time is necessary. If more time is needed, the delayed effective date should be revised.

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